

Title 35-A: PUBLIC UTILITIES

Chapter 13: PROCEDURE

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Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 13: PROCEDURE

§1301. SUBSTANTIAL COMPLIANCE

Substantial compliance by the commission with the requirements of this Title gives effect to all the commission's rules, orders and acts. The commission's rules, orders and acts may not be declared inoperative, illegal or void for an omission of a technical and immaterial nature. [1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). RR 2009, c. 2, §100 (COR).

§1302. COMPLAINTS

1. Filing a complaint. When a written complaint is made against a public utility by 10 persons aggrieved that the rates, tolls, charges, schedules or joint rate or rates of a public utility are in any respect unreasonable or unjustly discriminatory; that a regulation, measurement, practice or act of a public utility is in any respect unreasonable, insufficient or unjustly discriminatory; or that a service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible, shall, with or without notice, investigate the complaint.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Processing of complaint. The commission, immediately upon the filing of a complaint, shall notify in writing the public utility complained of that a complaint has been made and of the nature of the complaint. The utility shall file its response to the complaint within 10 days of the date the notice of complaint is issued. After receipt of the response, if the commission is satisfied that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is without merit, the complaint may be dismissed. If the complaint is not dismissed, the commission shall promptly set a date for a public hearing. The commission may allow for all parties to attempt to resolve the complaint to their mutual satisfaction. If a mutually satisfactory resolution does not appear to be forthcoming, the hearing shall be held on the complaint pursuant to section 1304. The commission may not enter an order affecting the rates, tolls, charges, schedules, regulations, measurements, practices or acts complained of without an opportunity for public hearing. In the absence of an informal disposition pursuant to Title 5, section 9053, the commission shall render a decision upon the complaint no later than 9 months after its filing.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Complaint by utility or commission. The commission may institute or any public utility may make complaint as to any matter affecting its own product, service or charges. The complaint shall be processed in accordance with subsection 2.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1303. INVESTIGATIONS

1. Summary investigations. The commission may on its own motion, with or without notice, summarily investigate when it believes that:

- A. A rate or charge is unjust or unreasonable; [1987, c. 141, Pt. A, §6 (NEW).]
- B. A service is inadequate or cannot be obtained; or [1987, c. 141, Pt. A, §6 (NEW).]
- C. An investigation of any matter relating to a public utility should for any reason be made. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Formal investigation. If after the summary investigation, the commission is satisfied that sufficient grounds exist to warrant a formal public hearing as to the matters investigated, it shall give the interested public utility written notice of the matter under investigation. Seven days after the commission has given notice, it may set a time and place for a public hearing. The hearing shall be held in accordance with section 1304.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1304. PUBLIC HEARINGS

Public hearings conducted by the commission under this Title are subject to the following provisions.

[1987, c. 141, Pt. A, §6 (NEW).]

1. Notice to utility and parties. The commission shall notify the public utility, other parties and interested persons it considers proper of the time and place of the formal public hearing as provided in Title 5, section 9052.

[1995, c. 226, §1 (AMD) .]

2. Notice to subscribers. If, after the commission has notified the public utility of the hearing as provided in this section or in section 310, it appears that the time, place and nature of the hearing will not be reasonably publicized by newspaper or otherwise, the following provisions apply.

A. The commission may by rule or upon written notice to the public utility require it to:

- (1) Give reasonable notice of the time and place of the hearing to each subscriber affected or to be affected by the subject of the hearing; or
- (2) File pertinent information as to the rates or service involved, including schedules of proposed rates, in the office of the clerk of the municipality where the subscribers reside. [1995, c. 226, §2 (AMD).]

B. The notice given by the public utility shall:

- (1) Be given by first class mail; and
- (2) Include a statement that pertinent information as to rates or service is on file in the office of the clerk of the municipality where the subscribers reside. [1987, c. 141, Pt. A, §6 (NEW) .]

C. Nothing in this section relieves the utility from the provisions of section 308. [1989, c. 502, Pt. A, §124 (AMD).]

[1995, c. 226, §2 (AMD) .]

3. Subpoenas. The commission may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence relating to any fact at issue in the hearing. A party to a hearing is entitled to have subpoenas issued by the commission in the manner described in Title 5, section 9060.

[1995, c. 226, §3 (AMD) .]

4. Hearings. A party to a hearing is entitled to be heard in the manner described in Title 5, section 9056.

[1995, c. 226, §3 (AMD) .]

5. Commission authorized to act on an expedited basis. In proceedings pursuant to section 1302, 1303 or 1321, after reasonable notice and opportunity to be heard, the commission may issue a temporary order pending the conclusion of the formal public hearing. In making the order, the commission shall consider the likelihood that it would be issued at the conclusion of the proceeding, the benefit to the public or affected customers compared to the harm to the utility or other customers of issuing the order and the public interest. Notwithstanding any other provisions of law, upon a written finding that the procedural requirements otherwise required by law will result in unreasonable harm to a utility, a customer or the public, the commission may establish accelerated notice periods, schedules and limitations on hearings as may be necessary to expedite consideration of the order.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Commission authorized to waive public hearing. Unless one or more parties request a public hearing, the commission may waive the requirement for a public hearing under any provision of this Title.

[1995, c. 357, §2 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 502, §A124 (AMD). 1995, c. 226, §§1-3 (AMD). 1995, c. 357, §2 (AMD).

§1305. HEARINGS; EXAMINERS

1. Commission's powers. Each of the commissioners, for the purposes of this Title, may:

A. Hold hearings; [1987, c. 141, Pt. A, §6 (NEW).]

B. Conduct investigations; [1987, c. 141, Pt. A, §6 (NEW).]

C. Administer oaths; [1987, c. 141, Pt. A, §6 (NEW).]

D. Certify to official acts; [1987, c. 141, Pt. A, §6 (NEW).]

E. Issue subpoenas; [1987, c. 141, Pt. A, §6 (NEW).]

F. Compel the attendance of witnesses and the production of books, accounts, papers, documents and testimony; [1987, c. 141, Pt. A, §6 (NEW).]

G. Punish by fine and imprisonment for contempt; and [1987, c. 141, Pt. A, §6 (NEW).]

H. Issue all processes necessary to the performance of the commission's duties. [1987, c. 141, Pt. A, §6 (NEW).]

[2011, c. 2, §38 (COR) .]

2. Examiners. The commission may appoint examiners who have authority to:

- A. Administer oaths; [1987, c. 490, Pt. C, §4 (RPR).]
- B. Examine witnesses; [1987, c. 490, Pt. C, §4 (RPR).]
- C. Issue subpoenas; [1987, c. 490, Pt. C, §4 (RPR).]
- D. Require the production of books, accounts, papers, documents and testimony; and [1987, c. 490, Pt. C, §4 (RPR).]
- E. Receive evidence in any matter under the commission's jurisdiction. [1987, c. 490, Pt. C, §4 (RPR).]

The examiners also shall perform such other duties as may be assigned to them.

[1987, c. 490, Pt. C, §4 (RPR) .]

3. Evidence. Evidence taken and received by the examiners has the same effect as evidence taken and received by the commission and authorizes commission action as though taken and received by it. When objection is made to the admissibility of evidence, examiners authorized to practice before the Supreme Judicial Court shall rule on the admissibility of evidence in accordance with the practice and rules of evidence in civil actions in the Superior Court except as otherwise provided.

[1993, c. 108, §1 (AMD) .]

4. Right to appeal. Either the examiner or the commissioner, who is the presiding officer at the hearing, shall at the outset of the hearing inform the public as to the steps necessary to preserve its right to appeal the final order or decision of the commission to the Supreme Judicial Court under the provisions of section 1320.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Use of advisory staff. This subsection applies to the participation of advisory staff and consultants in commission proceedings.

A. If an advisory staff member or consultant relies upon facts not otherwise in the record or presents to the commission any independent financial or technical analysis not otherwise in the record, the staff member or consultant:

- (1) Shall place any such information into the record;
- (2) Is subject to discovery; and
- (3) Must be available to answer questions regarding those facts or analysis, in the same manner as witnesses in the proceeding, at a time sufficient to permit parties to respond.

This paragraph does not apply to reviews, evaluations or examinations of information, data, studies, analyses or computer modeling placed into the record by other parties or other aid or advice provided by advisory staff members or consultants. Compliance with this paragraph does not render the advisory staff member or consultant an advocate under the Maine Administrative Procedure Act. [1997, c. 691, §3 (NEW); 1997, c. 691, §10 (AFF).]

B. On request of any party in a proceeding, the commission shall assign one or more staff members who are not advisors in the proceeding to rule on any objection to discovery requests made by or directed to advisors. [1997, c. 691, §3 (NEW); 1997, c. 691, §10 (AFF).]

C. The commission may assign one or more staff members who are not advisors in a proceeding to serve as advocates to facilitate negotiated settlements in the proceeding. If the commission receives a written request from all of the parties in an adjudicatory proceeding that one or more staff advocates be

appointed to facilitate a negotiated settlement in the proceeding, the commission shall either grant the request or issue a written order explaining the reasons why the commission denies the request. [1999, c. 602, §1 (AMD).]

[1999, c. 602, §1 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §C4 (AMD). 1993, c. 108, §1 (AMD). 1997, c. 691, §3 (AMD). 1997, c. 691, §10 (AFF). 1999, c. 602, §1 (AMD). RR 2011, c. 2, §38 (COR).

§1306. DECISION

The following provisions apply to the commission's findings and decisions. [1987, c. 141, Pt. A, §6 (NEW).]

1. Unjust rates. If after a formal public hearing the commission finds that the rates, tolls, charges, schedules or joint rates are unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of this Title, it may fix and order substituted just or reasonable rate or rates, tolls, charges or schedules. In determining the justness and reasonableness of the order, the commission shall assure rate design stability.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Unjust term, condition, practice, act or service. If after a public hearing the commission finds that a term, condition, practice, act or service complained of is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of this Title or if it finds that a service is inadequate or that reasonable service cannot be obtained, the commission may by order establish or change terms, conditions, measurement, practice, service or acts, as it finds to be just and reasonable. In determining the justness and reasonableness of the order, the commission shall assure rate design stability.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Conformity to decision. Every public utility to which the order applies shall change its schedules on file to conform to the order.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Copies. Copies of the commission's order shall be:

A. Certified by the administrative director; and [1987, c. 141, Pt. A, §6 (NEW).]

B. Delivered to the public utility affected by it. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Effective date. The order shall take effect:

A. After a copy is delivered to the public utility affected; and [1987, c. 141, Pt. A, §6 (NEW).]

B. When signed by the administrative director or within such other time as may be prescribed by the commission. [1987, c. 490, Pt. A, §3 (RPR).]

[1987, c. 490, Pt. A, §3 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §A3 (AMD).

§1307. ENFORCEMENT OF DECISIONS

Upon application of the commission or of the Attorney General, the Superior Court has full jurisdiction to enforce the commission's order and to enforce the public utilities' performance of the duties imposed on them by law, including the appointment of receivers, agents and special masters and providing them with adequate authority to carry the order of the courts and of the commission into effect. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1308. REPARATION OR ADJUSTMENT

The commission may order reparation or adjustment when it finds that an amount charged to or collected from a customer was not in accordance with the filed rate applicable to the customer or was based upon error. The customer shall attempt to settle any dispute concerning the alleged overcharge or billing error at an informal hearing with the utility company prior to filing a complaint with the commission. If the customer is dissatisfied with the utility company's decision, the customer may appeal the decision to the commission. The commission may not order a rebate for a billing error or excessive charge that antedates the order for more than 6 years. [2009, c. 2, §101 (COR).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). RR 2009, c. 2, §101 (COR).

§1309. ADJUSTMENT OF EXCESSIVE RATES

1. Complaint. The Commission may institute or any public utility may make complaint as to any matter affecting its own product, service or charges, with like effect as though made by any 10 persons, firms, corporations or associations.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Reparation or adjustment where utility admits excessive rate. The commission may authorize reparation or adjustment where the utility admits that a rate charged was excessive or unreasonable or collected through error, and where it further appears that the utility, within 90 days after the rendering of any service within the State under such rate, has filed a reduced rate in place of the rate which admittedly was excessive or unreasonable or collected through error.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Reduced rates; amount of reparation. The reduced rate published in accordance with this section shall continue in force one year unless sooner changed by the order or with the consent of the commission, and the amount of reparation which may be authorized by the commission shall not exceed the difference between the charges based on the reduced rate and the charges based on the rate canceled by the reduced rate.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Statute of limitations for complaints brought under this section. Within 2 years after the rendering of any service within the State by a public utility, for which service a rate, toll or charge is made by the utility, a person aggrieved may complain to the commission that the rate, toll or charge exacted for the service is unjustly discriminatory against him, either because it is higher than that charged by the same utility for the same service or service of similar value and cost rendered to other users or consumers, or because the utility

has failed, without reasonable cause, to make a more favorable rate, toll or charge published by it for the same or similar service applicable to the user or consumer or to the class of users or consumers to which he belongs, or at the place at which the service is rendered.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Complaint received within 6 months after reparation or adjustment ordered. Within 6 months after an order has been made authorizing reparation or adjustment under subsections 2 and 3, any person aggrieved may complain to the commission that the person is entitled to reparation from the same utility because the person paid the rates that the utility admits are excessive or unreasonable or collected through error, provided the utility might lawfully have made the reparation on its own petition, and provided the person has made a written request for the utility to file its own petition for authority to make the reparation or adjustment not less than 30 days before filing a complaint with the commission.

[2011, c. 420, Pt. A, §33 (AMD) .]

6. Commission investigation to determine whether to hold a hearing. Upon receipt of a complaint, the commission shall investigate as it determines necessary to determine whether a hearing ought to be held.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Notice of hearing. The commission may order a hearing upon such notice to the utility as it determines just and reasonable.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Commission decision after hearing; refund. If, after the hearing, the commission decides that the complainant has been injured by paying rates which the utility admits are excessive, unreasonable or collected through error, it shall determine the sum that the utility ought to refund or repay to the complainant, which sum the utility has the right to refund.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. Utility refusal or neglect to make refund; court action. If the utility refuses or neglects to make the refund within 30 days, the party aggrieved may maintain an action in the courts of the State to recover the amount. In the trial the findings of the commission are prima facie evidence of the truth of the facts found by it, and no utility may avail itself of the defense of the action that the service involved was in fact made on the published schedule rate in force at the time it was rendered.

[1995, c. 254, §4 (AMD) .]

10. Utility that complies may not be held liable. No utility making a refund upon the order of the commission or pursuant to judgment of the court may be liable for any penalty or forfeiture or subject to any prosecution under the laws of this State on account of making the refund.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1995, c. 254, §4 (AMD). 2011, c. 420, Pt. A, §33 (AMD).

§1310. FUNDING OF INTERVENORS BY THE COMMISSION

1. Intervenor funding. Intervenor funding may be provided as follows.

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that:

- (1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;
- (2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding, except that, if no commission advocacy staff is appointed to a proceeding, the intervenor must be likely to contribute substantially to the conduct of the commission proceeding and to assist in the resolution of the issues raised in the proceeding; and
- (3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor. [1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF).]

B. In any proceeding in which the commission does not implement standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., the commission may compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that requirements of paragraph A, subparagraphs (1) to (3), are satisfied. Compensation may be provided from the commission's regulatory fund and filing fees subject to the commission's determination of the availability of the funds. [1989, c. 281, (NEW).]

[1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF) .]

2. Determination of eligibility. A determination that an intervenor is eligible for an award of compensation pending the outcome of the proceeding shall be made by the commission at the earliest practicable time in the commission proceeding.

[1989, c. 281, (NEW) .]

3. Rules. The commission may, after notice and hearing, adopt rules as are necessary for the implementation of this section.

[1989, c. 281, (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 281, (RPR). 1997, c. 691, §4 (AMD). 1999, c. 127, §D5 (AFF).

§1311. PRACTICE AND RULES OF EVIDENCE; PROCESS SERVICE

1. Practice and rules of evidence. In all actions and proceedings arising under this Title, all processes must be served and the practice and rules of evidence are the same as in civil actions in the Superior Court except as otherwise provided.

[1993, c. 108, §2 (NEW) .]

2. Hearsay. A statement not specifically covered by the hearsay exceptions in the rules of evidence but having equivalent circumstantial guarantees of trustworthiness may not be excluded by the hearsay rules, if the presiding officer determines that:

- A. The statement is offered as evidence of a material fact and does not constitute unduly repetitious evidence; [1993, c. 108, §2 (NEW).]

B. The statement is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs; and [1993, c. 108, §2 (NEW).]

C. The general purposes of the rules of evidence and the interests of justice are best served by admission of the statement into evidence. [1993, c. 108, §2 (NEW).]

[1993, c. 108, §2 (NEW) .]

3. Process service. A sheriff or other officer empowered to execute civil process may execute a process issued under this Title and is entitled to receive the compensation prescribed by law for that service.

[1993, c. 108, §2 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1993, c. 108, §2 (RPR).

§1311-A. PROTECTIVE ORDERS; CONFIDENTIAL INFORMATION

Records placed under a protective order by the commission pursuant to the Maine Rules of Civil Procedure, Rule 26 (c) in accordance with this section, are within the scope of a privilege against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and are not public records while under the protective order. [1997, c. 691, §5 (AMD); 1997, c. 691, §10 (AFF).]

1. Issuance of protective orders. The following provisions govern the commission's issuance of protective orders.

A. The commission may issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26 (c). When issued, a protective order must be served on the party seeking the order. Service must be in accordance with the Maine Rules of Civil Procedure, Rule 5 (b). A requirement to disclose information pursuant to a protective order does not take effect until 24 hours after service of the protective order on the party seeking the protective order. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

B. In granting protective orders, the commission shall balance the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner where all parties have the right and opportunity to participate effectively as provided under the Maine Administrative Procedure Act, the Maine Rules of Civil Procedure, the Maine Rules of Evidence and the Maine freedom of access laws. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

C. The party requesting a protective order bears the burden of demonstrating the need for protection. The commission may partially and temporarily grant a request for a protective order, consistent with the provisions of paragraph D, to expedite the release of confidential information to certain parties, but the party seeking protection bears the burden of demonstrating that release of the information to other parties should be restricted. The commission may not issue a final order prohibiting or restricting access to a party without notice and an opportunity to be heard. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

D. If the commission issues a protective order that denies a party access to information, the commission shall provide the information to the party's attorney, if any, subject only to the restriction that the attorney use the information solely for the purpose of the proceeding and not disclose the information to others, except that:

(1) The commission may deny an attorney access to information relating to bids if the attorney represents a party that made a competing bid; and

(2) The commission may impose further limitations if the commission finds that an attorney has a direct, personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information.

Unless the commission finds that the conditions of subparagraphs 1 or 2 are met, the obligations of attorneys under the ethical rules, including the obligation to decline representation in certain cases, the authority of the commission to discipline attorneys who appear before the commission, including the authority, under section 1502, to punish for contempt persons who fail to comply with a protective order, and the commission's ability to recommend sanctions by other bodies, including the discipline of attorneys by the courts and the Board of Overseers of the Bar, is sufficient security to permit the attorney to have access to information in order to represent a party before the commission. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

E. The commission may prohibit or restrict the disclosure of information under protective order to a party's independent consultant only for compelling reasons and to the least extent necessary, except that the commission may require that the information be used only for the purposes of the proceeding in which it is disclosed and may prohibit disclosure of the information by the independent consultant to others. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

F. Notwithstanding any other provision of this subsection:

(1) The commission may deny all parties, including the commission and its staff, access to information if the commission finds that the potential for harm from disclosure of the information outweighs its probative value in the proceeding; and

(2) The commission may deny an attorney access to information under protective order if the commission finds that the attorney's request for access to the information is not made in good faith or that the attorney will not respect the terms of the protective order. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

[1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF) .]

2. Appeal. A party required to disclose information pursuant to a protective order issued by a hearing examiner in accordance with subsection 1 may appeal to the commissioners sitting as the commission in accordance with this subsection.

A. The basis for an appeal brought pursuant to this subsection is that the potential for damage resulting from the disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

B. A party bringing an appeal pursuant to this subsection must file the appeal within 24 hours of service of the protective order. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

C. If a party appeals in accordance with this subsection, the party is not required to disclose the information during the pendency of the appeal. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

D. The commission shall render a decision on the appeal brought pursuant to this subsection within 7 business days of the filing of the appeal. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

E. Notwithstanding subsection 1, the commission may impose limits on the disclosure of information beyond the limits imposed by the protective order issued in accordance with subsection 1 only if the commission finds that potential for damage resulting from disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF).]

For purposes of this subsection, the term "hearing examiner" means a commission staff person authorized to issue a protective order in a commission proceeding.

[1997, c. 691, §5 (NEW); 1997, c. 691, §10 (AFF) .]

SECTION HISTORY

1993, c. 535, §1 (NEW). 1997, c. 691, §5 (AMD). 1997, c. 691, §10 (AFF). 1999, c. 127, §D5 (AFF).

§1311-B. SECURITY OF CERTAIN UTILITY INFORMATION

1. Designation of information as confidential. If the commission, on its own motion or on petition of any person or entity, determines that public access to specific information about public utility technical operations in the State could compromise the security of public utility systems to the detriment of the public interest, the commission shall issue an order designating that information as confidential. Information designated as confidential pursuant to this section may include, but is not limited to, emergency response plans and network diagrams. Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.

[2001, c. 135, §1 (NEW) .]

2. Treatment of information by commission; generally. Except as otherwise provided in this section, the commission may not release information designated as confidential under subsection 1 and shall take appropriate steps to protect such information in its possession.

[2001, c. 135, §1 (NEW) .]

3. Access to information by parties in proceeding. Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the commission to obtain discovery of that information. Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the commission finds that specific limits are necessary to protect the public interest.

[2001, c. 135, §1 (NEW) .]

4. Release of information to other state agencies. The commission may release information designated as confidential pursuant to subsection 1 or require the release of that information by a public utility to another state agency to the extent necessary to support emergency preparedness or response, law enforcement or other public health and safety activities. The commission shall consult with a public utility before releasing or requiring the release of confidential information about that utility to a state agency unless the commission determines that the public health and welfare require immediate release without such consultation. The commission shall notify a public utility within 2 business days of providing information about that utility to a state agency pursuant to this subsection. As soon as practicable after receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's intent to release the information, the commission shall notify the public utility of the agency's intent.

[2001, c. 135, §1 (NEW) .]

5. Release by other state agencies. A state agency that receives information about a public utility pursuant to subsection 4:

- A. May not use that information for any purpose other than for the support of emergency preparedness or response, law enforcement or other public health and safety activities; [2001, c. 135, §1 (NEW) .]

B. May not release that information to any other person or entity without prior notice to the commission unless the agency determines that immediate release of the information to one or more persons or entities is necessary for the protection of public health and safety; and [2001, c. 135, §1 (NEW).]

C. Shall, when finished with the use of any documents received from the commission or from a public utility pursuant to subsection 4, return the documents to the commission or the public utility, as appropriate. [2001, c. 135, §1 (NEW).]

[2001, c. 135, §1 (NEW) .]

SECTION HISTORY

2001, c. 135, §1 (NEW).

§1312. WITNESSES AND FEES

1. Witnesses. Each witness who is ordered to appear before the commission shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the Superior Court. This provision does not apply to the employees, officers, directors, trustees and holders of more than 10% of the common stock of a public utility which is the subject of the commission's proceeding.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Fees. The State shall audit and pay the fees in the same manner as other state expenses are audited and paid upon the presentation of proper vouchers approved by the commission.

[1987, c. 490, Pt. C, §5 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §C5 (AMD).

§1313. DEPOSITIONS

The following provisions apply to depositions. [1987, c. 141, Pt. A, §6 (NEW).]

1. Taking depositions. Depositions shall be taken in the manner prescribed by law for taking depositions in civil actions in the Superior Court.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Use of depositions. The commission or any party may use the deposition of witnesses in a formal public hearing.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1314. BURDEN OF PROOF

1. Party adverse to the commission. In all trials, actions and proceedings arising under this Title or growing out of the exercise of the authority granted to the commission, the burden of proof is on the party adverse to the commission or seeking to set aside any determination, requirement, direction or order of the commission complained of as unreasonable, unjust or unlawful.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Public utilities. In all original proceedings before the commission where an increase in rates, tolls, charges, schedules or joint rate is complained of, the burden of proof is on the public utility to show that the increase is just and reasonable.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1315. SELF-INCRIMINATION; IMMUNITY

1. Self-incrimination. In any proceeding before the commission, if a person refuses to answer questions or produce evidence on the ground that he may be incriminated and if the commission staff, in writing, and with the written approval of the Attorney General, requests the commission to order that person to answer the questions or produce the evidence, the commission, after notice to the witness and a hearing, shall so order unless it finds to do so would be clearly contrary to the public interest.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Immunity. If, but for this section, the person would have had the right to withhold the answers given or the evidence produced by him, he may not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction or matter which concerns the answers he gave or the evidence he produced in accordance with the order.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Failure to comply. If a person fails to answer questions or produce evidence as ordered by the commission, following notice and hearing, he is subject to the provisions of section 1502. A person may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt that he commits in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1316. TESTIMONY PRESENTED BY EMPLOYEES OF PUBLIC UTILITIES OR COMPETITIVE SERVICE PROVIDERS TO LEGISLATIVE COMMITTEES AND TO THE PUBLIC UTILITIES COMMISSION

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, expressed or implied, but does not include an independent contractor. [1987, c. 769, Pt. A, §137 (AMD).]

B. "Employer" means a public utility or competitive service provider licensed to do business in this State with one or more employees. [1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. "Legislative committee" means a joint standing committee or a joint select committee of the Legislature, a task force, commission or council or any other committee established by the Legislature and composed wholly or partly of Legislators for the purpose of conducting legislative business. [1987, c. 141, Pt. A, §6 (NEW).]

D. "Own time" means an employee's vacation or personal time, earned as a condition of employment. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. Right to provide testimony. Employees of a public utility or competitive service provider have the right to represent themselves and to testify before a legislative committee or the commission on their own time. An employee of a public utility or competitive service provider who complies with this section may not be denied the right to testify before a legislative committee or the commission.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. Discharge of, threats to or discrimination against employees of utility service providers for testimony presented to legislative committees or the commission. Unless otherwise provided for, a supervisor may not discharge, threaten or otherwise discriminate against an employee of a public utility or competitive service provider regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee or to the commission regarding the operation of the business of a public utility or competitive service provider or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

This subsection does not apply to an employee who has testified before or provided information to a legislative committee or to the commission unless the employee has first brought the subject matter of the testimony or information in writing to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable time to address the subject matter of the testimony or information. If appropriate, the employer shall respond in writing.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

4. Exceptions. The protection created in subsection 3 does not apply to testimony that, upon reasonable inquiry by the employee, would be found to be false, slanderous, libelous or defamatory or to testimony that violates a term or condition of a collectively bargained agreement or to testimony that discloses trade secrets or corporate strategy, the disclosure of which would result in harm to the employer.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

5. Civil actions for injunctive relief or other remedies. An employee of a public utility or competitive service provider who alleges a violation of rights under this section and who has made reasonable efforts to exhaust all grievance procedures, as provided for in the contract of employment or which otherwise may be available at the employee's place of employment, may bring a civil action, including an action for injunctive relief, within 90 days after the occurrence of that alleged violation or after the grievance procedure or similar process terminates. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides. An employee must establish each and every element of the employee's case by a preponderance of the evidence.

[1999, c. 398, Pt. A, §21 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

6. Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this section, may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of these remedies. A court may also award the prevailing party all or a portion of the costs of litigation, including reasonable attorneys' fees and witness fees, if the court determines that the award is appropriate.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Collective bargaining rights. This section does not diminish or impair the rights of a person under any collective bargaining agreement.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Jury trial; common-law rights. Any action brought under this section may be heard by a jury. Nothing in this section derogates any common-law rights of an employee or employer.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 769, §A137 (AMD). 1999, c. 398, §A21 (AMD). 1999, c. 398, §§A104,105 (AFF).

§1316-A. INFORMATION RELATED TO VIOLATION OF STATE LAW; CONFIDENTIALITY

Subject to the requirements of Title 5, section 9055 regarding ex parte communications but notwithstanding any other provision of law, the commission may declare and treat as confidential communications from any person concerning the affairs of a utility that are reasonably related to a violation of state laws. [1993, c. 165, §2 (NEW).]

SECTION HISTORY

1993, c. 165, §2 (NEW).

§1317. APPEARANCE BY OFFICER OR EMPLOYEE OF CORPORATION OR PARTNERSHIP

Notwithstanding Title 4, section 807, the appearance of an authorized officer, employee or representative of a party in any hearing, action or proceeding before the commission in which the party is participating or desires to participate is not an unauthorized practice of law and is not subject to any criminal sanction. In order to facilitate the efficient processing of any proceeding, the commission may, in its discretion, require the appearance of counsel on behalf of the party. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1318. RECORD OF PROCEEDINGS

1. Record. The commission shall keep a complete record of:

- A. All proceedings before it; [1987, c. 141, Pt. A, §6 (NEW).]
- B. Investigations; and [1987, c. 141, Pt. A, §6 (NEW).]
- C. Formal public hearings. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Hearings reporter. The commission shall appoint, subject to the Civil Service Law, hearings reporters who shall take all testimony before the commission.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1319. CERTIFIED COPIES OF ORDERS FURNISHED

The commission shall furnish a certified copy under the commission's seal of its orders to any person who applies and pays for it as provided in the commission's rules. A certified copy of an order is evidence of the facts stated in it. [1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1320. REVIEW OF COMMISSION ACTION

The following procedures apply to an appeal of a decision of the commission. [1987, c. 141, Pt. A, §6 (NEW) .]

1. Final decisions. An appeal from a final decision of the commission may be taken to the Law Court on questions of law in the same manner as an appeal taken from a judgment of the Superior Court in a civil action.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Parties. Any person who has participated in commission proceedings, and who is adversely affected by the final decision of the commission is deemed a party for purposes of taking an appeal.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Terms. Where a law or rule regulating the taking of an appeal from the Superior Court in a civil action uses the terms "the court," "the clerk," "the clerk of the courts," or a similar term, they shall for purposes of an appeal from the commission mean "the commission," "the administrative director of the commission," or other appropriate term, respectively.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Notice of appeal. The notice of appeal shall be accompanied by a brief statement of the nature of the proceeding before the commission, a copy of the decision, order or ruling complained of, a statement of the grounds upon which the order or ruling is claimed to be unlawful and a certificate that the attorney for the appellant is of the opinion that there is probable ground for the appeal as to make it a fit subject for judicial inquiry and that it is not intended for delay.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Additional court review. An appeal may also be taken in the same manner as an appeal under subsection 1, when the justness or reasonableness of a rate, toll or charge by any public utility or the constitutionality of any ruling or order of the commission is in issue, notwithstanding that the ruling or order is not final.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Law Court jurisdiction is exclusive. The Law Court has exclusive jurisdiction over appeals and requests for judicial review of final decisions and of rulings and orders subject to subsections 1 and 5, with the exception of the Superior Court's jurisdiction to review rules under Title 5, section 8058.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Stay. While an appeal under subsection 1 is pending, no injunction may issue suspending or staying any order of the commission and the appeal shall not excuse any person or corporation from complying with and obeying any order or decision or any requirement of any order or decision of the commission or operate in any manner to stay or postpone the enforcement of the order or decision, except in the cases and upon the terms as the commission orders. While an appeal under subsection 5 is pending final determination by the court, the Chief Justice, or in his absence any other justice, may enjoin or stay the effect of the ruling or order upon the terms and conditions as he determines proper.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Additional evidence. No evidence beyond that contained in the record of the proceedings before the commission may be introduced before the court, except that in cases where issues of confiscation or of constitutional right are involved, the court may order additional evidence it determines necessary for the determination of issues to be taken before the commission upon the terms and conditions the court determines proper. If the court orders additional evidence to be taken, the commission shall promptly hear and report that evidence to the court, so that the proof may be brought as nearly as reasonably possible down to the date of its report to the court. The commission may, after hearing the evidence, modify its findings as to facts and its original decision or orders by reason of the additional evidence so taken, and it shall file with the court that amended decision or orders and those modified or new findings. If the commission modifies or amends its original decision or orders, the appealing party or any other party aggrieved by the modified or amended decision or order may file with the court, within such time as the court may allow, a specification of errors claimed to have been made by the commission in the modified decision or orders, which specifications or errors shall be considered by the court in addition to the errors asserted in the original complaint on appeal.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. Certification of decision, costs. The result of the appeal shall be certified by the clerk of the Law Court to the administrative director of the commission and to the clerk of the Superior Court for Kennebec County. The prevailing party shall recover costs to be taxed by the Superior Court in accordance with the law for the taxation of costs on appeal in civil actions. Execution for these costs shall be issued from the Superior Court of Kennebec County in the same manner as in actions originating in the court. Double costs shall be assessed by the court upon any party whose appeal appears to the court not to be a fit subject for judicial inquiry or appears to be intended for delay.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§1321. ORDERS ALTERED OR AMENDED

The commission may at any time rescind, alter or amend any order it has made including an order fixing any rate or rates, tolls, charges or schedules of a public utility or an order relating to matters within the jurisdiction of the commission with respect to a competitive service provider only if it gives the public utility or competitive service provider and all parties to the original proceeding, to the extent practical, written notice and after opportunity for those parties to present evidence or argument, as determined appropriate by the commission. Certified copies of amended orders must be served and take effect as provided for original

orders. Nothing in this section is intended to grant to the commission authority to establish or approve the rates charged by competitive service providers. [1999, c. 398, Pt. A, §22 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1995, c. 226, §4 (AMD). 1999, c. 398, §A22 (AMD). 1999, c. 398, §§A104,105 (AFF).

§1322. ORDERS TEMPORARILY SUSPENDED, ALTERED OR AMENDED

1. Orders temporarily amended. When the commission finds it necessary to prevent injury to a public utility's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the public utility's consent, suspend existing rates, schedules or orders affecting the public utility. When the commission finds it necessary to prevent injury to a competitive service provider's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the competitive service provider's consent, suspend existing orders affecting the competitive service provider.

[1999, c. 398, Pt. A, §23 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. Rates. Rates made under this section:

A. Apply to one or more of the public utilities in the State or to any part of them as the commission directs; and [1999, c. 398, Pt. A, §23 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Take effect and remain in force as the commission prescribes. [1987, c. 141, Pt. A, §6 (NEW).]

[1999, c. 398, Pt. A, §23 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. Limitation of authority. Nothing in this section is intended to grant the commission authority to establish or approve the rates charged by competitive service providers.

[1999, c. 398, Pt. A, §23 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A23 (AMD). 1999, c. 398, §§A104,105 (AFF).

§1323. EXHAUSTING RIGHTS BEFORE COMMISSION; APPLICATION TO LEGISLATURE

No public utility may apply to the Legislature to grant it a right, privilege or immunity which the commission has power to grant it until the utility has exhausted its rights regarding its request before the commission. [1987, c. 141, Pt. A, §6 (NEW).]

In applying to the Legislature, the utility shall state in writing that it has applied to the commission for the right, privilege or immunity requested and that the commission has denied its application. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

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